

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RONALD BILLITIER, JR.,

Plaintiff,

DECISION AND ORDER

08-CV-6482L

v.

MERRIMACK MUTUAL FIRE INSURANCE COMPANY,

Defendant.

Plaintiff brings this action against an insurance company, seeking coverage for water damage pursuant to an insurance policy. The complaint asserts two causes of action: the first cause of action asserts breach of the insurance contract, and the second, violation of the notification provisions of 11 NYCRR §216.6(c). On September 11, 2009, defendant moved to dismiss the second cause of action pursuant to Fed. R. Civ. Proc. 12(b)(6) and 12(c). (Dkt. #10).

By letter from plaintiff's counsel dated October 19, 2009, (Dkt. #14), the Court is now advised that plaintiff has voluntarily agreed to withdraw the second cause of action, leaving only the first cause of action for breach of contract. Accordingly, defendant's motion to dismiss the second cause of action (Dkt. #10) is hereby granted, and the second cause of action is dismissed, with prejudice.

IT IS SO ORDERED.



DAVID G. LARIMER

United States District Judge

Dated: Rochester, New York
October 26, 2009.